

**Harrison Steel Castings Company and James Loren Watkins, Case 25-CA-12306**

May 12, 1981

**ORDER DENYING MOTION**

On July 28, 1980, the Regional Director for Region 25 of the National Labor Relations Board issued a complaint and notice of hearing in the above-entitled proceeding, alleging that Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Subsequently, Respondent filed an answer admitting in part, and denying part, the allegations of the complaint and submitting that the complaint should be dismissed in its entirety.

On October 15, 1980, Respondent filed a Motion for Summary Judgment, with exhibits attached. Thereafter, on October 17, 1980, the Board issued an order transferring the proceeding to it and a Notice To Show Cause why Respondent's motion should not be granted. Thereafter, the General Counsel filed a response to the Notice To Show Cause and a brief in support and later an amendment thereto. Subsequently, Respondent filed a reply to the motion in opposition.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Respondent asserts in its motion that the General Counsel erred by failing to litigate the allegations of the instant charge and complaint with the allegations in consolidated Cases 25-CA-10936-1, 25-CA-11051, 25-RC-7174, 25-CA-10936-2, 25-CA-11317, 25-CA-11989, 25-CA-10984, and 25-CA-11367, and that his failure to litigate such matters in the earlier proceeding precludes him from litigating these allegations in the present proceeding.

Pursuant to orders consolidating cases and notices of hearing issued on July 31, 1979, October 12, 1979, and April 8, 1980, Cases 25-CA-10936-1, 25-CA-11051, 25-RC-7174, 25-CA-10936-2, 25-CA-11317, 25-CA-11989, 25-CA-10984, and 25-CA-11367 were consolidated and scheduled for hearing on January 21 and April 21, 1980. Based on the complaints issued in that proceeding, the subject matter for litigation concerned allegations that Respondent violated Section 8(a)(1), (3), and (4) of the Act as a result of various threats, promises, interrogations, polls, surveillance, restrictions, assignments, layoffs, warnings, and discharges, most of which allegedly occurred between mid-February and mid-May 1979. However, three allegations referred to acts which allegedly occurred

during September 1979, and one which allegedly occurred in February 1980. During the litigation of these charges, which covered 4 hearing days, 73 witnesses were called to testify. The Charging Party herein was called as a witness for the General Counsel on April 21, 1980, regarding alleged threats. The charge in the instant case was filed on June 17, 1980. The complaint issued on July 28, 1980, and alleges that Respondent discharged the Charging Party on February 14, 1980, and thereafter refused to reinstate him because he supported the Union, because he engaged in concerted activities, and in order to discourage employees from engaging in such activities in violation of Section 8(a)(3) and (1) of the Act.

In its answer to the complaint and in its brief in support of the Motion for Summary Judgment, Respondent contends that the General Counsel is precluded from litigating the alleged violations herein, which relate to occurrences which took place prior to the April 1980 litigation, and which should have been discovered during the course of the investigation of the charges in the earlier litigation. In support of its argument that roughly concurrent unfair labor practices must be litigated in a single proceeding, so as to prevent unnecessary harassment of respondents, Respondent cites *Peyton Packing Company, Inc.*, 129 NLRB 1358 (1961), and *Jefferson Chemical Company, Inc.*, 200 NLRB 992 (1972).

In response to the Notice to Show Cause, the General Counsel argues he was not obligated to proceed with an investigation of the facts surrounding the Charging Party's discharge at any time prior to the date the charge was filed. *Gould, Inc.*, 221 NLRB 899 (1975). The General Counsel also contends that neither of the cases cited by Respondent is applicable herein because the Charging Party's discharge is an independent act, standing apart from the allegations of the prior case, and that the issuance of the instant complaint is not an attempt to re-try the same facts on a new theory or to split the same facts into two proceedings.

We agree with the General Counsel that he is not precluded from litigating the allegations in the present complaint. There is nothing in the record to indicate that the General Counsel was aware of the allegations of the present complaint at the time of the earlier proceeding, and we find no merit in Respondent's argument that the General Counsel should reasonably have discovered the circumstances of the Charging Party's discharge during the earlier investigation.

We find this case to be governed by the principles of *Maremont Corp. World Parts Division*, 249 NLRB 216 (1980), and that the prosecution of the instant case does not subject Respondent to unnec-

essary harassment. The allegations of the instant complaint are not intertwined with those of the earlier consolidated complaints, but rather are completely separate from the prior litigation. To accept Respondent's argument that the General Counsel be compelled to litigate all unfair labor practices occurring during the pendency of litigation of other unfair labor practice charges against the same respondent would not only severely restrict the General Counsel's discretion, but also allow a respondent to delay indefinitely the ultimate litigation of any charges by simply engaging in further unlawful conduct. Such a result is completely at odds

with the purposes and policies of the Act. Therefore, Respondent's arguments are rejected.

The Board, having duly considered the matter, is of the opinion that there are substantial and material issues of fact and law which may best be resolved at a hearing before an administrative law judge. Accordingly,

It is hereby ordered that Respondent's Motion for Summary Judgment be, and it hereby is, denied.

IT IS FURTHER ORDERED that the proceeding be, and it hereby is, remanded to the Regional Director for Region 25 for the purpose of arranging such hearing and that such Regional Director be, and he hereby is, authorized to issue notice thereof.